

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY POWER COMPANY )  
D/B/A AMERICAN ELECTRIC POWER FOR )  
APPROVAL, TO THE EXTENT NECESSARY, ) CASE NO.  
TO TRANSFER FUNCTIONAL CONTROL ONLY ) 2002-00475  
OF TRANSMISSION FACILITIES LOCATED IN )  
KENTUCKY TO PJM INTERCONNECTION L.L.C. )  
PURSUANT TO KRS 278.218 )

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Mar 9 2003

POSTHEARING BRIEF OF THE ATTORNEY GENERAL

Kentucky Power Company d/b/a American Electric Power (KPCo and AEP) filed an application pursuant to KRS 278.218 to transfer functional control of KPCo's transmission facilities located in Kentucky to PJM Interconnection, L.L.C. (PJM) on December 9, 2002. Intervention has been granted to the Attorney General of the Commonwealth of Kentucky (AG), Kentucky Industrial Utility Customers (KIUC), and to PJM. Following two informal conferences, opportunity for discovery, and filing testimony, a hearing was conducted on March 25, 2003. This brief follows.

AEP HAS FAILED TO MEET ITS BURDEN OF PROOF TO SHOW THAT A TRANSFER OF FUNCTIONAL CONTROL OF KPCO'S TRANSMISSION FACILITIES TO PJM IS IN THE PUBLIC INTEREST OR FOR A PROPER PURPOSE AS REQUIRED BY KRS 278.218.

This is the first case to consider a request for transfer of control pursuant to the newly enacted KRS 278.218 which provides:

(1) No person shall acquire or transfer ownership of or control, or the right to control, any assets that are owned by a utility as defined under KRS 278.010(3)(a) without prior

approval of the commission, if the assets have an original book value of one million dollars (\$1,000,000) or more and:

(a) The assets are to be transferred by the utility for reasons other than obsolescence;

or

(b) The assets will continue to be used to provide the same or similar service to the utility or its customers.

(2) The commission shall grant its approval if the transaction is for a proper purpose and is consistent with the public interest.

This statute was enacted by the Kentucky General Assembly in 2002 with full legislative awareness of activity at the federal level encouraging utilities to participate in regional transmission organizations (RTO) and the corresponding expectation that the functional control of transmission assets would be transferred to the RTO as a part of that participation. The function and purpose of RTOs is the development of a robust and transparent national wholesale market through equal access to transmission. The function and purpose of KPCo, the utility, is the provision of retail electric service within its certified service territory in accord with the provisions of KRS Chapter 278. The objectives and benefits of the RTO and the utility are not the same particularly as equal access to transmission does not hold the promise of lower electric prices for the customers of a utility whose costs are below average that it holds for customers located in higher cost regions.

Because KRS Chapter 278 is dedicated to the governance of the provision of retail electric service by utilities within their certified service territories, the question of what constitutes “for a proper purpose” and what is “in the public interest” under KRS 278.218 must be examined from the point of view of the provision of retail electric service to Kentucky customers. Nothing presented by AEP in support of its application

shows that the proposed transfer is for a proper purpose for KPCo's customers or that it is in the public interest of KPCo's ratepayers.

The only analysis done by AEP has been from a system-wide perspective with an eye to the enhancement of wholesale sales for all of AEP east. As the lowest cost provider in AEP's system, no benefit was quantified for KPCo under that system-wide analysis. No cost-benefit analysis was performed to determine whether the provision of retail electric service by KPCo would be enhanced or benefited by joining any RTO, much less this RTO. No cost benefit analysis was provided to determine whether the minimum of three million dollars in added expenses for the same services would be justified in any way.

Far from showing the proposed transfer to be in the public interest, the evidence showed the proposed transfer to be against the interest of KPCo ratepayers, and therefore, against the public interest being protected by KRS 278.218. The transfer of functional control to PJM would definitely move those in charge of policy and decision making with reference to KPCo's transmission one step further from KPCo's customers. It would place that power in the hands of an organizations that does not have the provision of retail electric service to KPCo customers as a primary goal. That transfer of control would require KPCo to participate in pro rata curtailment of transmission on an equal footing with firm transmission customers on lines it owns in direct contravention of KRS 278.214 (which requires that a utility interrupt service to all customers other than native load before interrupting service to its native load) should there be an emergency or event which requires service curtailment. A transfer of functional control to PJM would replace the regulatory oversight now present in this Commission with federal oversight. The

primary regulatory objective of policy and review pertaining to these transmission assets would be shifted from the provision of retail electric service to the development of the wholesale electric market, moving these Kentucky ratepayers one step closer to losing the benefit of low cost energy which the legislative buffer of KRS 278.218 is designed to protect..

#### CONCLUSION

KPCo d/b/a AEP has failed to prove that a transfer of functional control of its transmission assets to PJM is in the public interest. The Commission should deny the application.

Respectfully submitted



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NOTICE OF FILING AND CERTIFICATE OF SERVICE

I hereby give notice that I have filed the original and ten true copies of the foregoing Brief of the Attorney General with the Executive Director of the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky this the 9<sup>th</sup> day of May, 2003, and further certify that I have served the parties to this action by mailing a true copy of the Brief of the Attorney General, postage prepaid, this same day to the following:

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A handwritten signature, appearing to read "J. Bach", is written over a horizontal line.